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ÉMÉRIC CRUCÉ

BY

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"THE BROOKE FAMILY OF WHITCHURCH, HAMPSHIRE, ENGLAND,"
"THE ALABAMA ARBITRATION," ETC.

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TO

MONSIEUR ERNEST NYS,

VICE-PRÉSIDENT AU TRIBUNAL DE PREMIÈRE INSTANCE DE BRUXELLES,

PROFESSEUR A L'UNIVERSITÉ DE BRUXELLES,

MEMBRE DE L'INSTITUT DE DROIT INTERNATIONAL,

CHEVALIER DE L'ORDRE DE LÉOPOLD,

AND

MONSIEUR ALBERT SOENENS,

JUGE AU TRIBUNAL DE PREMIÈRE INSTANCE DE BRUXELLES.

Ez fer war, I call it murder,—
  There you hev it plain an' flat;
I don't want to go no furder
  Than my Testyment fer that;
God hez sed so plump an' fairly,
  It's ez long ez it is broad,
An' you 've gut to git up airly
  Ef you want to take in God.

'Taint your eppyletts an' feathers
  Make the thing a grain more right;
'Taint afollerin' your bell-wethers
  Will excuse ye in His sight;
Ef you take a sword an' dror it,
  An' go stick a feller thru,
Guv'ment aint to answer for it,
  God 'll send the bill to you.

JAMES RUSSELL LOWELL.

Émeric Crucé is hardly, if at all, known on this side of the Atlantic, and has not received the recognition that is his due. In June, 1897, while working in the Bibliothèque Nationale, I took copious notes upon what he wrote in his *Nouveau Cynée* in reference to international arbitration and have prepared this monograph to show what an important place he has filled in its development. In a letter that appeared in a Philadelphia weekly paper, December 7th, 1899, I called attention to Crucé and his proposal in 1623 of a permanent International Court at Venice. In collecting some of the materials for this book, I have received assistance from Samuel Dickson, Esq., and J. Rodman Paul, Esq., members of the Philadelphia Bar, Dr. William H. Klapp, Head-Master of the Protestant Episcopal Academy, of Philadelphia, James G. Barnwell, Esq., Librarian of the Philadelphia Library, and Bunford Samuel, Esq., of the Ridgway Library.

T. W. B.

Philadelphia, Christmas, 1899.

ÉMÉRIC CRUCÉ.

I.

THE meeting last summer (1899) at the Hague of delegates from most of the powers of the world, in response to the call of the Emperor Nicolas the Second, to consider the possibilities of lightening the burdens imposed on humanity by militarism,[1] has forced upon public attention, in a much larger measure than ever before, the evolution of international peace. The war that is now raging in South Africa so soon after the deliberations at the Hague, shows that universal peace is probably but a dream. Yet the submission of the *Alabama* claims,

[1] *International Arbitration and the Peace Conference at the Hague* by F. de Martens, delegate from Russia to the Conference at the Hague: *The North American Review;* Volume CLXIX. (1899), pages 604–624.

The International Conference of Peace, by Seth Low, President of Columbia College and United States Delegate to the Peace Conference: *The North American Review*, volume CLXIX. (1899), pages 625–639.

La Conférence de la Haye et l'Arbitrage International, par Arthur Desjardins: *Revue des Deux Mondes*, volume 155, (1899), pages 1–26.

the Bering Sea seal fisheries, and the Venezuela-Guiana boundary, to the decisions of International Courts of Arbitration proves that war can be avoided by a resort to arbitration, whenever the parties to an international controversy conclude that it will be more advantageous for them to submit to the peaceful award of a Court of Arbitration rather than to the chances of a war, with its uncertain results and its heavy cost in blood and, especially, treasure, that modern warfare and economic conditions impose on the combatants.

The chief fundamental force that makes for war or peace is the need of food. In order that man, like any other living organism, may exist, he must have food; and after his sustenance is assured, he desires other necessaries and luxuries to add to his comforts. In a simple state of society, when the tribal organization is barely formed, war carried on by one band against another costs little beyond the loss of life. Then, as a number of tribes are welded into a small state or nation, the complexity of society grows and the wealth of the people exposed to loss or destruction by war increases. As the state form of government develops and the number of people increases, whether they will favor keeping the peace or seek war depends on whether or not they can supply their wants from the wealth in their posses-

sion. So long as the individuals as a whole have the opportunity to gain what they consider a comfortable livelihood with reasonable ease, the State, which in its actions is a reflex of the opinions of the mass of the citizens, will not be eager to gain the wealth of another people through war. But so soon as a large part of the community, owing to increasing numbers or other causes, find it difficult to obtain what they deem a suitable living, they will begin to cast covetous eyes upon the possessions of others.[2] Sometimes their desire to gain the wealth of others will result in a civil war; but more generally they will force the State to make war on another people. Hunger nerves both man and beast in the quest for food. When the hunter comes upon a lion

[2] On this point see the notable and patriotic speech of ex-President Grover Cleveland at the tenth annual dinner of the Reform Club at New York, April 24th, 1897. He said in part:—"The fundamental truth that our free institutions offer opportunities to all within their influence, for the advancement and improvement of their condition, has been so far denied that honest accumulation is called a crime and the necessity and habit of individual effort and struggle, which are the mainsprings of sturdy Americanism, are descried as unjustifiable burdens, while unwholesome paternalism is presented in handsome and inviting garb. Those enlisted in this crusade of discontent and passion, proclaiming themselves the friends of the people, exclude from that list all their countrymen except those most unfortunate or unreasonable, and those whom they themselves have made the most discontented and credulous."

that has just enjoyed a good feast, the king of beasts will steal away if he can; but if he has not had food for many days, he will show fight.[3] As it is with wild animals, so it is with humanity. But as civilization or co-operation progresses, and foreign commerce develops, nations become more interdependent. War then, by interrupting trade, inflicts injury upon the wealth of both the conquerors and the conquered. Also, when a great world power, with millions of inhabitants, trading with all parts of the world and depending for its prosperity upon the maintenance of that commerce, engages for any cause upon a serious war, it incurs, in order to maintain its armaments on a war footing, enormous debts, and consequently it must increase its taxation. A great war, by giving feverishly active business to the manufacturers of arms and the other purveyors of the necessaries for war, brings prosperity to those engaged, whether as employers or employees, in those industries. But to the people as a whole,

[3] "At night and when urged on by hunger, lions are sometimes incredibly daring; in fact as old Jan Viljoen once said to me, 'a hungry lion is a true devil, and fears nothing in the world.'" *A Hunter's Wandering in Africa*, by F. C. Selous: London: R. Bentley, 1881, page 266.

An able writer has laid bare in the following passage why men fight:—"Two bulls who dispute over a pasture, two lions who dispute over a flock, two savage tribes fighting for a hunting ground, show us plainly the cause of war; but the

war can only bring increased burdens, for it destroys and does not create legitimate trade;[4] and by forcing the imposition of increased taxation, war adds to the cost of manufacturing in that country, and to the extent that it thereby increases the cost of production it contributes a disadvantage to the ability of that people to sell in foreign markets more cheaply than citizens of other countries. As the increasing facilities for transportation develop international commerce, war threatens more and more with destruction or serious loss the victors as well as the vanquished.[5] Even to-day, the powers that are building railroads so that they may more easily mass their troops are thereby making themselves more amenable to the economic forces of

current changes aspect as it departs from its source, it increases and grows purer, and soon, forgetful of its weaknesses, from where comes also all its grandeurs, humanity prides itself justly about the heroism of a Leonidas or the genius of a Hannibal." *La France Nouvelle*, par Prévost-Paradol, de *l'Académie Française:* Paris: Calmann Levy, 3 Rue Auber: *Treizième édition*, 1884, page 266.

[4] Compare Bastiat's "The Broken Pane" in his essay, *Ce qu'on voit et ce qu'on ne voit pas: Oeuvres complètes:* Paris; Guillaumin et Cie., 1854; Volume V., page 337.

[5] *Recherches économiques, historiques et statistiques sur les guerres contemporaines* par Paul Leroy-Beaulieu, 1869.

Commercial Expansion vs. *Colonial Expansion:* An open letter by Andrew Carnegie, Nov. 20th, 1898.

the trade of the world: for with the opening of those roads to commerce, trade will soon roll over their rails.

In the main, it is the desire to possess what others have, that leads nations on to war; and it is the dread of losing what they have—in these latter days, the fear of injury to commerce[6]—that gives pause to their warlike aspirations.

Great nations, though they will readily attack small and weaker states, when they think the gain will outweigh the cost, hesitate to precipitate war with another first-class power. This seems to be true of all powerful nations alike. Perhaps the clearest illustration of this power of force in influencing the foreign policy of a great State, was the consent of Great Britain to arbitrate her territorial dispute with Venezuela, but her refusal to do so with the South African Republic. When in 1895 President Cleveland sent to Congress his message on the Venezuela-Guiana Boundary question, England, confronted with the danger of having war with the United States as well as with Venezuela, if she pushed her land claims against the South American nation with force of arms, paused in her forward policy because she could

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[6] *Der Krieg*, von Johann von Bloch (translated from the Russian): Berlin: Puttkammer & Mühlbrecht, 1899.

Esprit des Lois, par Montesquieu, *livre vingtième, chapitre II.*

not risk a war with the United States; and finally consented to submit her case to an International Court of Arbitration. A few years later, however, when Great Britain again wished to extend her territory at the expense of a small State—the Transvaal Republic—she refused the proffer of arbitration of her small opponent,[7] and forced on war. Ap-

[7] President Kruger offered to submit the differences between the Transvaal Republic and Great Britain to the decision of an International Court composed of two arbitrators, nominated by the two governments respectively, who "shall agree respecting a third person, who shall act as President of the arbitration tribunal," which should decide in every case by a majority vote.

Sir Alfred Milner, in submitting to his government this proposal of President Kruger for arbitration, wrote:—

"It is evident that this third person will virtually decide everything, and it is provided that he shall 'not be a subject of one of the arbitrating parties,' *i. e.*, a foreigner.

"On this ground alone I feel sure her Majesty's Government will not accept the proposal. For every reason I think it is desirable that it should promptly intimate its total inability to entertain it."

See extract from Sir Alfred Milner's dispatch of June 14th, 1899, to his Home Government: *The Times*, London, August 26th, 1899, page 5.

L'Angleterre et la République Sud-Africaine by John Westlake, Q. C., LL. D., Professor of International Law in Cambridge University: *La Revue de Droit International et de Législation Comparée;* Volume 28 (1896), pages 268–300.

The Transvaal Suzerainty: a letter by John Westlake, to the Editor of the London *Times*, published in that paper on September 22nd, 1899, page 8, last column.

Impressions of South Africa, by James Bryce: New York: The Century Co., 1898.

parently the South African Republic could not offer a serious and protracted resistance, and England had no cause to fear the active intervention of a first-class power. In a war against the United States and Venezuela, Britain was almost certain to lose ultimately, while against the South African Dutch Republic, war could hardly but end sooner or later in her victory on the field of battle.

Since the discoveries by Adam Smith and the Physiocrats, and their successors—Mill, J. B. Say, Bastiat, David A. Wells, and others—of those economic laws, which before their time acted unknown and unseen by humanity, it is possible for people who stop to think and reason, to see that war imposes, not only destruction of life, but also, by stopping and destroying commerce as well as requiring the maintenance of large armies, heavy financial losses and burdens.[8] Our great countryman and President, George Washington, saw this clearly. In a letter to Lafayette in 1786 he said:—

"As the member of an infant empire, as a philanthropist by character, and, if I may be allowed the

[8] *Principes de la Science Politique* par E. de Parieu, *Vice-Président du Conseil d'Etat, Membre de l'Institut:* Paris, 1870, pages 351–355.

Ce qu'on voit et ce qu'on ne voit pas par Frédéric Bastiat: *Oeuvres complètes:* Paris; Guillaumin et Cie., 1854; Volume V., pages 340–343.

expression, as a citizen of the great republic of humanity at large, I cannot avoid reflecting with pleasure on the probable influence that commerce may hereafter have on human manners and society in general. On these occasions I consider how mankind may be connected like one great family in fraternal-ties. I indulge a fond, perhaps, an enthusiastic idea, that, as the world is evidently much less barbarous than it has been, its melioration must be progressive; that nations are becoming more and more humanized in their policy, and in fine that the period is not very remote when the benefits of a liberal and free commerce will pretty generally succeed to the devastations and horrors of war."[9]

Another great statesman, Richard Cobden, also hoped that freedom of trade would diminish the frequency of war.[10] He had no idea that armies could be done away with altogether, nor was he so visionary as to think that with the adoption of international arbitration, the world would be freed

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[9] "*Protection*," by John DeWitt Warner: *Tariff Reform: Published semi-monthly by the Tariff Reform Committee of the Reform Club:* Volume IV., No. 12 (New York, September 30th, 1891), page 37.

[10] *L'Arbitrage International: Son passé—son présent—son avenir*, par Michel Revon: Paris: Arthur Rousseau, 1892, pages 433–434.

from all its woes: but he hoped that with the development of international trade, war would become less frequent until it should cease perhaps altogether.[11] He saw clearly that the power behind the throne of international peace was those economic laws of commerce that in the long run are stronger than the most powerful of legislatures.

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[11] *Cobden et la Ligue: Oeuvres complètes* de Frédéric Bastiat: Paris: Guillaumin et Cie., 1883, Volume III., pages 86–87.

II.

From early times, as soon as man had developed to a high degree of social relations, as in Egypt and Babylon, the desire to avoid strife and war is at first faintly, then gradually more strongly, discernible. One of the earliest written expressions of this wish to escape the arbitrament of arms was given by the old Jewish prophet, Micah, who was born about 750 B. C., when he said:—[12]

"And He shall judge among many people, and rebuke strong nations afar off; and they shall beat their swords into plow-shares, and their spears into pruning-hooks: nation shall not lift up a sword against nation, neither shall they learn war any more."

And a little later the prophet Isaiah said:—[13]

"And He shall judge among the nations, and shall rebuke many people; and they shall beat their swords into plow-shares, and their spears into pruning-hooks: nation shall not lift up sword against nation, neither shall they learn war any more."

The ancient Grecian States made some attempts to settle their quarrels with one another without war;

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[12] Micah IV., 3.

[13] Isaiah II., 4.

but the meagre details that we possess of the inter-State arbitration that obtained in some measure among the Grecian States, show that the Greeks did not practice international arbitration in its modern sense. It would seem, however, from a phrase in Herodotus [14] that a custom prevailed among the Greeks themselves for two towns, both subjects of a more powerful city, to submit any differences that might arise between them to the decision of the court of their sovereign city. An analogous case to-day would be a suit between the cities of Philadelphia and Pittsburg, argued before the highest court of their sovereign, the Supreme Court of Pennsylvania. But a dispute between two of the sovereign members of the Union—as for example a case involving the boundary between Pennsylvania and New York—submitted to the Supreme Court of the United States, would be very different.

In 418 B. C. the Lacedæmonians defeated the Argives completely. The Argives were not in a position to refuse to ratify any terms that the Lacedæmonians might press upon them, and in the treaty of peace with which the two States concluded the war, they agreed to settle their differences for fifty years without recourse to arms. One of the clauses of the treaty reads as follows:—

[14] Herodotus; Book 5, Section 83.

"If any city of the allies shall quarrel with a city they shall go to some city [with their quarrel] whichever city it may appear is fair and impartial to both." [15]

While this seems to have been an attempt to arrive at something like international arbitration, yet among the Greeks themselves arbitration in the modern sense hardly, perhaps never truly, obtained; and between the Greeks and the rest of the world (*οἱ βάρβαροι*) it never existed.

Many writers have referred to international arbitration in the times of the Roman Empire. With those countries who were not under the *pax Romana*, the Romans did not arbitrate except by force. Between States that were more or less under the rule of Rome, international arbitration did not obtain, for international arbitration can only be practiced between sovereign and independent States. When two independent Nations asked Rome to decide a question over which they disagreed, she generally played the part of the judge in the case

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[15] Thucydides, Book 5, Section 79.

For an account of the Amphictyonic Council, see the *History of Federal Government from the foundation of the Achaian League to the disruption of the United States*, by Edward A. Freeman: Volume I.; *Introduction—History of the Greek Federations:* London, 1863, pages 123–143.

of the oyster, for sooner or later she annexed them both. [16]

When the wild hordes that overran and dismantled the Roman Empire had in a measure quieted down and made some advances in civilization, men began to see the advantages and value of co-operation in the struggle for life. They sought, at first perhaps unconsciously, to place limits upon the right of every man to himself avenge his wrongs. The army leader, who was invested by election with sovereign power, became the judge of the disputes between his subjects; and by degrees as his power developed into that of a king, the right of private war gave way to his justice. But before the unrestricted vendetta of early times gave place to the justice of the sovereign, there was an intermediate stage during which restriction after restriction was thrown around the right of private vengeance. Thus Alfred of England allowed the kinsmen of a murdered man to avenge him; but they were to seek the murderer in his house and surround it for seven days before attacking him; during that time the slayer

[16] See *Traité théorique et pratique de l'Arbitrage International: le rôle du droit dans le fonctionnement actuel de l'institution et dans ses destinées futures* par A. Mérignhac : Paris ; L. Larose, 1895, pages 22–30.

might make a money payment that was regarded as satisfaction for the crime.[17]

Later, geographical, ethnological and social forces grouped the inhabitants of Europe into nations. The struggles between the smaller states of early times were then succeeded by the larger and more important wars between the great nations.[18] The law of self-preservation impelled the weaker powers to form alliances against the stronger. It was in this way that what has been looked upon as the first scheme for perpetual peace came to be devised.

When, after many years of severe fighting, Henry of Navarre finally succeeded in mounting the throne of his ancestors, he sought to fortify his possession of the crown, first by restoring peace to his

[17] *Essays in Anglo-Saxon Law:* Boston, 1876: *The Anglo-Saxon Legal Procedure* by J. Lawrence Laughlin, pages 268–269. "If he have power to surround and besiege his foe, let him watch him during seven days, and not attack him, if he (foe) wish to remain there. If he wish to surrender and give up his arms, let him guard him unhurt thirty days, and announce it to his kinsman and friends [*i. e.* in order that they may make composition for him]."

[18] For an account of the cases of mediation during the Middle Ages, see *Les Origines du Droit International* par Ernest Nys: Brussels, 1894; pages 49–61. See also *Traité théorique et pratique de l'Arbitrage International: le rôle du droit dans le fonctionnement actuel de l'institution et dans ses destinées futures* par A. Mérignhac: Paris; L. Larose, 1895, pages 31–42.

distracted kingdom, and afterwards by curbing the power of his great adversary, the House of Austria.[19] The former of these objects he secured through a grant of religious toleration to the Protestants. The second he sought to accomplish by welding the other Christian nations into a great league against the House of Hapsburg.

All that has come down to us of this latter project, known to history as *le grand dessein*, we are told by Henry's great Minister, Maximilian de Bethune, Baron de Rosny, afterwards Duc de Sully.[20] International publicists are not agreed to-

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[19] *Histoire du Roy Henry le Grand composee par Messire Hardouin de Perefixe Evesque de Rodes, cy-devant precepteur du Roy. A Amsterdam, chez Louys et Daniel Elzevier 1661.*

[20] Shortly after Henry's death in 1610, Maximilian de Bethune began to dictate his *Mémoires des Sages et Royales Œconomies d'Estat Domestiques, Politiques et Militaires de Henry le Grand.* Only the first two volumes, which cover the years 1570 to 1605, were completed during Sully's lifetime, but, after his death, two of his secretaries and Jean Laboureur completed the unfinished portion. The first edition was published in two folio volumes at the Château de Sully in 1638 by a printer of Angers, under the *designation* of Amstelredam (*sic*). A new edition was printed at Rouen in 1649. In the eighteenth century, the Abbé de l'Écluse des Loges transformed the *Œconomies royales* into *Mémoires de Sully.*

Mémoires des Sages et Royales Œconomies d'Etat, Domestiques, Politiques et Militaires de Henry le Grand, l' Exemplaire

day whether *le grand dessein* was an actual fact, or only a product of Sully's imagination.[21] But

des Roys, le Prince des Vertus, des Armes et des Loix, et le Pere en effet des ses Peuples François, et des servitudes utiles, obeissances convenables et administrations loyales de Maximilian de Bethune, l'un des plus confidens, familiers et utiles soldats et serviteurs du Grand Mars des François. Dediez a la France, a tous les bons soldats et tous peuples François.

Nouvelle Collection des Mémoires pour servir à l'Histoire de France, depuis le xiii^e^. siècle jusqu'a la fin du xviii^e^., * * * par MM. Michaud de l'Academie Française et Poujoulat: *Deuxième Série:* Paris, 1837, *chez l'Editeur du Commentaire Analytique du Code Civil.* See also *Commentaire sur les Elements du Droit International et sur l'Histoire des Progrès du Droit des Gens de Henry Wheaton*, par William Beach Lawrence: Leipzig: F. A. Brockhaus, 1869: Volume II., pages 195–200. *Les Origines du Droit International*, par Ernest Nys: Paris and Brussels, 1894, page 395. *Manuel du libraire et de l'amateur de livres*, par Jacques Charles Brunet: Paris, 1864, Volume V., page 589.

[21] "Those were the foundations of what Sully calls often the grand project of his master, but it seems according to what he relates, that it was much more the project of Sully himself." *Histoire des Français*, par Sismonde de Sismondi: 1839: Part VIII., Chapter X., Volume XXII., pages 148, 149.

"All the plan of organization imagined for the institution itself, all the means invented to make it work were exclusively the labor of Sully. Submitted to Henry the Fourth, they occupied his attention at various times, but never continuously: between him and his minister they were only the subject of interviews and writings; never of resolutions and political action." *Histoire du règne de Henri IV.*, par Poirson: 1856: Book VII., Chapter II., Volume II., page 873.

"The project of a general pacification and of a European

whether it was a fact or not, as the plan of Henry and Sully was not to settle the differences of European nations by means of arbitration, but to overthrow the power of the House of Hapsburg by means of a league of the other European states,[22] *le grand dessein* cannot be looked upon as the beginning of international arbitration. Besides, Sully's Memoirs were not published until 1638, fifteen years after Éméric Crucé, also a Frenchman, had published the book in which he advocated the establishment at Venice of an International Court of Arbitration.

Henry the Fourth of France intended to form a *very Christian Republic* (*republique tres-chrestienne*). It was to consist of fifteen sovereignties, with the power of each so nicely adjusted that no one

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confederation developed in the *Mémoires des sages et royales œconomies d' Estat de Henry-le-Grand* made its way, and was the starting point of wishes (*voeux*), systems and even political facts that led, in the succeeding centuries, to more or less elaborate plans of organization of States with the view to peace." *Traité de Droit International Public Européen et Américain*, par P. Pradier-Fodéré: Paris, 1894: Volume VI., page 66.

"Only, it is known now that the so-called *Grand dessein* is purely and wholly a product of the imagination of Sully." *Etudes de Droit International et de Droit Politique*, par Ernest Nys; Brussels and Paris, 1896: page 302.

[22] Leibniz noted this warlike idea of *le grand dessein*. *Etudes de Droit International et de Droit Politique*, par Ernest Nys: Brussels and Paris, 1896: page 306.

would be tempted to take up arms against its neighbors for fear that the others would attack it. Of these fifteen sovereignties, five—the Pope, the Emperor, and the Kingdoms of Poland, Hungary and Bohemia—were to be elective: six—France, Spain, England, Denmark, Sweden and Lombardy—were to be hereditary: and four—the Venetians, a group of Italian Duchies, the Swiss Cantons, and the Low Countries—were to be Republics. Henry first told of his plans to Queen Elizabeth in 1601; and he and she even made arrangements for a meeting at Dover or Calais to talk the matter over. This purpose was frustrated by some of their subjects, but, Sully tells us, that they had some correspondence upon the subject.

Henry proposed in case of a disagreement over the election of the Emperor or the King of the Romans, that the differences should be referred "to the arbitration of the Pope, the Kings of England, Denmark and Sweden, of the Venetians and the cantons of Switzerland, such of the three as they would wish to choose."[23]

To diminish the prestige of the House of Austria, Henry intended breaking through the custom

[23] The original French is: "en l'arbitrage du Pape, des rois d'Angleterre, Dennemarc et Suede, des Venitiens et des cantons de Suissse, tel des trois qu'ils voudront choisir."

that had grown up of electing Emperor the head of the Hapsburgs, by restoring to the sovereign members of the Empire the right to choose the Emperor from any reigning house they saw fit. He planned not only to deprive the powerful rival of his house of this prerogative of great dignity, but also to weaken its material resources.[24] To the Swiss cantons he proposed to add—of the Hapsburg possessions—Tyrol, Franche-Comté and Alsace. Further, he agreed with the Duke of Savoy, whose son had married his daughter, to join the Duke in a request to the King of Spain, the Duke of Savoy's brother-in-law, to give

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[24] In a letter to the King, Sully in writing of *le grand dessein* says :—

"La première, à reduire toute la maison d'Austriche à une domination si bien ajustée et proportionnellement composée, qu'elle delivre tous les Estats et dominations chrestiennes des craintes et apprehensions qu'elle leur a tousjours donné sujet de prendre, d'estre opprimez et asservis par elle : et la seconde, que tous ceux de cette maison soient persuadez, par raisons convenables, à se départir de leur anciennes aviditez pleines d'extorsion, afin qu'ils ne pensent jamais à choses dommageables à autruy : à quoy il semble impossible de les pouvoir faire resoudre, tant qu'ils possederont une quantité d'Estats et de royaumes outre ceux que contiennent les Espagnes."

Nouvelle Collection des Mémoires pour servir à l'Histoire de France, depuis le xiii^e^. siecle jusqu'a la fin du xviii^e^., Maximilian de Bethune, Duc de Sully, Sages et Royales Œconomies d'Estat suivies d'une réfutation contemporaine inédite : Paris, 1837, chez l'Editeur du Commentaire Analytique du Code Civil : page 425.

to Savoy's children an inheritance equal to that which their aunt Isabella had received. "And in case of a refusal, which no one doubted,[25] the King would permit M. Desdiguieres to assist M. de Savoye with fifteen thousand men on foot, two thousand horse, twenty cannons and their necessary equipment to aid him to carry out their behests. And besides this, he was to help the said Duke of Savoye with a hundred thousand *escus* a month, so long as the differences should last, whose repayment he placed on Savoye, besides (*voire*) he was resolved to march in person and royal apparel of war, if it was necessary." In addition, the King of France and his associates agreed that they would petition the Pope and the Venetians to intervene as arbitrators to amicably settle the differences that were on the point of breaking forth between France and Spain concerning the Kingdoms of Navarre, Naples and Sicily, and the Comté de Roussillon. To show to the world that it was not on account of ambition, Henry declared that he was satisfied with the existing limits of his dominion, and that he would renounce to the King of Spain the Kingdom of Navarre and the Comté de Roussillon absolutely and perpetually upon condition that the King of Spain

[25] The French is: "et en cas d'un refus, duquel l'on ne doutoit nullement."

would transfer to Henry, Naples and Sicily. These latter two possessions he offered to hand over to the Venetians. These cessions of territory by the Spanish crown were to equalize the balance of power.

Finally, each of the fifteen sovereign members of the Christian Republic should send two delegates to a general council. This body should decide all causes of dispute that might arise between the different sovereignties, and fix the amount of contribution each power should make towards the maintenance of the army and navy of the confederation. Sully thought that the forces raised by the confederated powers would be sufficiently strong to restore and maintain the Empire in its ancient "rights, liberties and privileges, which is the principal object of your designs." [26]

Henry wished to secure France against the menace of the great power of the House of Austria. His idea was so to weaken the strength of the Hapsburgs, by depriving them of some of their territories, that they could not threaten France. And to succeed in this purpose, he planned to group the other Christian nations into a grand alliance with the object of cutting, by armed intervention, some of the claws

[26] The original French is: "droit, libertez et privileges, qui est le principal but de vos desseins."

of the double headed Austrian eagle. Then, when he had rearranged the map of Europe according to his ideas, he proposed, in order to give vent to the warlike desires of the European nations, that a united Europe should wage war upon the Infidels. Sully and Henry did not contemplate settling the rivalry between France and the House of Hapsburg by means of international arbitration, but by war. The basic thought of *le grand dessein* was armed force, not peace,—

> "The good old rule
> Sufficeth them, the simple plan,
> That they should take who have the power,
> And they should keep who can."[27]

[27] Wordsworth's *Rob Roy's Grave.*

III.

The originator of modern international arbitration was probably a Frenchman—Émeric Crucé. In 1623 he published a small book, entitled:—

Le
Nouveau Cynée
Ou
Discours d'Estat
représentant les occasions et moyens
d'establir une paix generalle, et la liberté du
commerce par tout le monde.
Aux Monarques et Princes
souverains de ce temps.
Em. Cr. Par.
A Paris,
chez Jacques Villery, au Palais sur
le perron Royal.
M. DC. XXIII.
Avec Privilège du Roy.

The single known copy of this remarkable book is in the Bibliothèque Nationale. It is not large, but filled with much reasoning. In it Crucé presented what was probably the first real proposal of substituting international arbitration for war as the court of last resort for nations. In the preface he said: "This book would gladly make the tour of the inhabited world, so as to be seen by all the Kings, and

it would not fear any disgrace, having truth for its escort, and the merit of the subject which must serve as letters of recommendation and credence."[28]

Émeric Crucé was born at Paris about 1590 and died in 1648. He published a number of works in Latin, but so little is known about him that, until a few years since, when Judge Nys[29] of Brussels restored to him his true name, publicists called him Emery de la Croix. He printed in 1618 an annotated copy of Statius. That publication gave rise to a

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[28] "Ce livre feroït volontiers le tour de la terre habitable, afin d'estre veu de tous les Roys, et ne crandroit point aucune disgrace, ayant la verité pour escorte, et le merite de son subject, qui luy doit servir de lettres de recommandations et de creance."

[29] Monsieur Ernest Nys, *Vice Président au tribunal de première instance de Bruxelles*, professor in the University of Brussels, a member of *l'Institut de Droit International*, and a *Chevalier de l'Ordre de Leopold*, is the author of many valuable books upon International Law. Some of the more important are:—

La Guerre Maritime: Brussels, 1881.

Le droit de la guerre et les précurseurs de Grotius: Brussels, 1882.

L'Arbre des batailles d'Honorê Bonet: Brussels, 1883.

Les Origines du Droit International: Brussels, 1894.

Etudes de Droit International et de Droit Politique: Brussels, 1896.

Recherches sur l'Histoire de l'Économie Politique: Brussels, 1898.

Les Théories Politiques et le Droit International en France jusq'au XVIII^e siècle: Brussels, 1899.

violent contemporaneous discussion, which was the means through which Judge Nys discovered Crucé's real name.

"If we cite this polemic, it is because," Judge Nys says,[30] "it allows us to know the exact name of the author [of *Le Nouveau Cynée*]. The few ancient authors who speak of him call him generally 'Emericus Crucejus or de La Croix'; modern biographers call him 'Éméric de La Croix.' The fact is his name is Éméric Crucé, from which came the Latinized name of Crucaeus. Doubt is not possible, and we find a formal indication of this in the anagram that the *Silvarum frondatio* contains, whose author was Antoine Dorcal, barrister at Paris. Here is the text:—

"*ANAGRAMMA IN AUTOREM HUJUS FRONDATIONIS.*

Emericus Cruce
Ecce Mercurius.
Ne temere in Silvis Statianis lector oberres,
Ecce vialis adest hic tibi Mercurius.

"We can mention here that it was probably to the translator of the *Bibliographia politica* of Gabriel Naudé that we owe the attribution to the author of *Le Nouveau Cynée* of the name of de La Croix.

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[30] *Etudes de Droit International et de Droit Politique* par Ernest Nys: Brussels and Paris, 1896, page 308.

Naudé writes correctly Emericus Crucaeus; the translator, Charles Challine, gives Emery de la Croix.

"The edition of the works of Statius is dedicated to Henri Godefroy; the notes on the *Thebaid* of the same poet are dedicated to Guillaume Ribier, councillor of State, president and lieutenant-general at Blois; finally, the *Silvarum frondatio* is preceded by a letter to Henri Le Clerc du Tremblay, councillor of the *parlement* of Paris, a brother of the councillor of Cardinal de Richelieu, François Le Clerc du Tremblay, known to history by his religious name of Father Joseph."

Crucé held, especially for his time, broad and liberal views. He believed that it was for the advantage of humanity that the different races and nations should not seek to injure and destroy one another by war, but rather to exchange their products. "There are those," he says, "who care so little for strangers that they think it good politics to sow among them divisions, in order to enjoy a more secure quiet. But I think quite differently, and it seems to me that when one sees the house of his neighbor burning or tumbling down that one has as much cause for fear as compassion, because human society is a body all of whose members have a common sympathy, so that it is impossible

that the sickness of one shall not be communicated to the others. Therefore this small book contains an universal policy, useful to all nations alike and agreeable to those that have some ray of reason and sentiment of humanity."

Crucé, who holds that Princes are responsible for war,[31] argues that every one has an interest in the preservation of peace. He considers that the merchant is far more useful to human society than the soldier. He says: "In short, there is no occupation to compare in utility with that of the merchant who legitimately increases his resources by the expenditure of his labor and often at the peril of his life, without injuring anyone: in which he is more worthy of praise than the soldier whose advancement depends upon the spoil and destruction of another."[32] And a little further on Crucé writes: "In case it may be possible that we may obtain a universal peace, of which the best result is the establishment of commerce: and on that account

[31] Modern history shows that Democracies as well as Princes are responsible for the substitution of war for diplomacy.

[32] "Bref il n'y a mestier comparable en utilité à celuy du marchand, qui accroist legitimement ses moyens aux depens de son travail, et souventefois au peril de sa vie, sans endomager n'y offenser personne: en quoy il est plus loüable que le soldat, dõt l'advancement ne depend que des despoüilles et ruines d'autruy." *Le Nouveau Cynée*, page 30.

(*partāt*) the monarchs must see to it that their subjects can traffic without fear as well by sea as by land: which every person will be easily able to do in his particular capacity."[33]

While Crucé could not see in the first quarter of the seventeenth century as clearly as Richard Cobden in the middle of the nineteenth that international trade is the power behind the throne of international peace, yet he realized that free trade and the development of international commerce would tend, by making countries more inter-dependent, to cause wars to grow less frequent. He pointed out that, in order to enjoy the greatest benefits and advantages of commerce, nations must have peace. "Watch must be kept to facilitate the means of communications, not only on the great rivers but also on the smaller, and render these latter capable of carrying boats, since that is at the base of commerce, so much so that those people who have no river form water ways by artificial means like the *Brabançons*, who have dug a canal

[33] The original text is: "Si tant est que nous puissions obtenir une paix universelle, dont le plus beau fruict est l'etablissement du commerce: et partāt les Monarques doivent pourveoir, à ce que leur subiects puissent sans aucune crainte trafiquer tant par mer que par terre: ce qu'un chacun pourra aisement faire en son estat particulier." *Le Nouveau Cynée*, page 32.

from Brussels to the Scheldt, in order to communicate more easily with Antwerp."[34]

Crucé proposed to join the seas by means of canals, and recalled that Francis the First promised such works in Languedoc. He also maintained that pirates, like those of Algeria, should be suppressed and that ships of war should guard "the ways of the high seas."[35] "What a pleasure it would be," he says, "to see men go freely here and there, and to hold intercourse with one another, without any scruples of country, ceremonies or other such diversities, as if the earth were as she really is, a dwelling-place (*cité*) common to all!" "Only the savages could oppose such a policy; but if they wish to continue their brutal ways of living, they will be blocked, attacked and killed like poor beasts in their lairs."

By the side of commerce (*la negotiation*), he placed the practical arts, such as architecture, clock making, the manufacture of silk and linen, and the mechanical arts. Then he discusses the exact sciences, giving the first places for usefulness to medicine and mathematics. But strangely for one who further on in his book advocated the creation of an

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[34] *Le Nouveau Cynée*, page 33.

[35] *Le Nouveau Cynée*, pages 41–42.

International Court, composed of the Ambassadors of the powers, to judge between the nations, Crucé thought that jurisprudence was not a necessary part of social economy. "Theology," he said, "surpasses our capacity. Dialectics is only subservient and an aid to the others [sciences (?)]. Physics is a knowledge of nature that depends on experience. Rhetoric is superfluous. Jurisprudence is also not necessary, and a good natural judgment is sufficient to finish lawsuits, without having recourse to a multitude of laws and decisions that only confuse cases instead of simplifying them. Grammar, poetry and history are more specious than profitable."

To the objection that the diversity of nations causes quarrels and wars, Crucé replies: "Why should I a Frenchman wish harm to an Englishman, a Spaniard, or a Hindoo (Indian)? I cannot wish it when I consider that they are men like me, that I am subject like them to error and sin and that all nations are bound together by a natural and consequently indestructible line, which makes it that a man cannot consider another a stranger, unless he follows the common and inveterate opinion that he has received from his predecessors."

In speaking of religious toleration, Émeric Crucé says: "I have not undertaken to solve this difficulty, a more knowing one than I would be much

confused (*empesché*) : only I will say that all the religions tend to the same end, namely, the recognition and adoration of the Divinity. And if some do not choose the good road or the legitimate way, it is more from simplicity and ill teaching than from malice, and therefore, they are more worthy of compassion than of hatred."

Crucé proclaims with force the necessity of religious toleration. "Since true religion is a supernatural gift, it must come from God and not from men who, with all their arms, have not the power to compel belief in the least of its mysteries. * * * That those who have true religion do not think they can control imperiously by their will the belief of others, in whom they have no interest, provided that they hold themselves within the bounds of modesty and do not disturb the concord (*feste*) of public tranquility. * * * It does not belong to men to punish or correct the mistakes of faith; it belongs to Him who sees hearts and the most secret thoughts. The faults of the will are punishable by civil laws, those of knowledge, to wit, false doctrines, have only God for judge. Therefore those who have wished to shake this cord have gained nothing."

Crucé believes that general peace is possible, and that neither international obstacles, nor differ-

ences of religion, nor diversity of nationality are legitimate causes for war. But he saw and proclaimed that as a prerequisite to the peaceful settlement of international disputes, some sort of machinery disposing of international differences was necessary. His plan was to organize an International Court at Venice before whom any Powers that disagreed should appear in the person of an ambassador to plead their cause.

"Take the case," he says, "that peace is signed to-day, that it is published to the whole world: how do we know that posterity will ratify the articles. Opinions are changeable, and the actions of the men of the present time do not bind their successors. To close this objection it suffices to remember what we have said about the causes of war, which not being considerable, for the reasons given above, there is nothing which can occasion the rupture of a peace. Nevertheless, to prevent the inconvenience of this, it would be necessary to choose a city, where all sovereigns should have perpetually their ambassadors, in order that the differences that might arise should be settled by the judgment of the whole assembly. The ambassadors of those who would be interested would plead there the grievances of their masters and the other deputies would judge them without prejudice (*passion*). And to give more

authority to the judgment, one would take advice also from the big republics who would have likewise in this same place their agents. I say great Republics, like those of the Venetians and the Swiss, and not those small lordships (*Seigneuries*), that cannot maintain themselves, and depend upon the protection of another. That if anyone rebelled against the decree of so notable a company, he would receive the disgrace of all other Princes, who would find means to bring him to reason. The most commodious place for such an assembly is the territory of Venice, because it is practically neutral and indifferent to all Princes: added thereto that it is near the most important monarchies of the earth, of those of the Pope, the two Emperors, and the King of Spain. It is not far from France, Tatary, Moscovy, Poland, England, and Denmark. As for Persia, China, Ethiopia, and the East Indies and the West Indies, they are lands far distant, but navigation remedies that inconvenience, and for such a good object, one must not refuse a long voyage."[36]

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[36] The original old French text is as follows:—

"Posez le cas que la paix auiourd'huy soit signée, qu'elle soit publiee en plein theatre du monde: Que scavons-nous si la posterité en voudra emologuer les articles? Les volōtez sont muables, & les actiōs des hommes de ce temps n'obligent pas leurs successeurs. Pour clorre le passage à ceste obiection, il suffit se rememorer de ce que nous avōs dit touchant les causes

Crucé contemplated a universal union that should include even Persia, China, Ethiopia, the East Indies, the West Indies, indeed all the world. A delicate question was, how to arrange the order of rank and precedence. He *suggested* as a possible solution of this difficulty, the following order, and some of the reasons for it:

First: The Pope, in part out of respect to ancient Rome.

Second: The Sultan of the Turks, because of "the majesty, power and happiness of his Empire,"

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de la guerre, lesquelles n'estans pas considerables pour les raisons cy-dessus alleguees, il n'y a riẽ qui puisse occasionner la rupture d'une paix. Neantmoins pour en prevenir les inconveniens, il seroit necessaire de choisir une ville où tous les Souverains eussent perpetuellement leurs ambassadeurs, afin que les differẽs qui pourroient survenir fussent vuidez par le iugement de toute l' assemblee. Les ambassadeurs de ceux qui seroient interrez exposeroient là les plaintes de leurs maistres, & les autres deputez en iugeroient sans passions. Et pour authoriser d'avantage le iugement, on prendroit advis des grandes Republiques, qui auroiẽt aussi en ce mesme endroiet leurs agens. Ie dis grandes Republiques, comme celle des Venitiens & des Suisses, & nõ pas ces petites Seigneuries, qui ne se peuvent maintenir d'elles mesmes, & dependent de la protection d'autruy. Que si quelqu'en cõtrevenoit à l'arrest d'une si notable cõpagnie, il encourroit la disgrace de tous les autres Princes, qui auroient beau moyen de le faire venir à la raison. Or le lieu le plus commode pour une telle assemblee c'est le territoire de Venise, pource qu'il est cõme neutre & indifferent à tous Princes: ioinct aussi qu'il est proche des plus signalees Monarchies de la

and also on account of the memory of the ancient Eastern Empire, of which Constantinople was the capital.

Third: The Christian Emperor.

Fourth: The King of France.

Fifth: The King of Spain.

Then the claims of the Kings of Persia and China, Prester John, the Precop (*sic*) of Tatary and the Grand Duke of Moscovy, must be arranged.

Next the importance and order of precedence of the Kings of Great Britain, Poland, Denmark, Sweden, Japan and Morocco, the Great Mogul and the other monarchs demanded attention.

Crucé proposed, among other expedients, to give the first place to the first comer, or to the oldest, or again *à tour de role.*

He was not blind to the fact that freedom of trade and universal peace, without the initiative of some one, could never become realities. In his opinion, two potentates, the Pope and the King of France, could broach the subject to the sovereigns

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terre, de celles du Pape, des deux Empereurs, & du Roy d'Hespagne. Il n'est pas loing de Frãce, de Tartarie, Moschouie, Polongne, Angleterre & Dannemarch. Quant à la Perse, la Chine, l'Ethiopie, & Indes orientales & occidentales, ce sont pays bien reculez, mais la navigation supplee ceste incommodité, & pour un si bon subiect, on ne doibt point refuser un long voyage." *Le Nouveau Cynée*, pages 60–61.

of the world: the former to the Christian princes, the latter to the Mohammedan rulers. Crucé wrote: "Only let them publish peace *By the orders of the King!* Those words will make them drop their arms from their hands."[37]

[37] "Qu'on publie seulement la paix *De par le Roy!* Ces paroles leur feront tomber les armes des mans." *Le Nouveau Cynée*, page 81.

IV.

Crucé's work bore good fruit. Gabriel Naudé in his *Bibliographia politica* (1642) mentions *Le Nouveau Cynée*, "done rather for recreation of the mind than on account of any opinion that the writer had that the advice that he gives can ever succeed."[38]

In the year 1664, Charles Sorel in *La bibliothèque frânçoise ou le choix et l'examen des livres françois qui traitent de l'éloquence, de la philosophie, de la dévotion et de la conduite des moeurs*, says: "There is a book called *Le Nouveau Cynée*, which gives reasons for the establishment of a general peace and freedom of trade through all the world. One imagines that something additional is necessary to make it a success, but the design is always beautiful and bold."[39]

Leibniz,[40] in a letter to l'Abbé de Saint Pierre upon the latter's *Paix perpétuelle*, wrote, *à propos* of Crucé: "When I was very young, I knew a work entitled, *Le Nouveau Cynée*, whose unknown author counselled sovereigns to rule their States in peace

[38] *Etudes de Droit International et de Droit Politique*, par Ernest Nys: Brussels and Paris, 1896, page 316.

[39] *Ib.*, page 316.

[40] Leibniz signed his letters without a *t*: see his letters in the British Museum. Communicated by Judge Nys.

and to submit their differences to an established tribunal; but I do not know how to find this book and I do not remember now any details. It is known that Cineas[41] was a confidant of King Pyrrhus who advised the latter to rest himself at first, as it was

[41] Cineas was a Thessalian orator and negotiator, who studied rhetoric under Demosthenes, and was renowned for eloquence. He visited Epirus and became a favorite of Pyrrhus. Plutarch relates the following famous conversation between the orator and the king:—

"There was then at the court of Pyrrhus, a Thessalian named Cineas, a man of sound sense, and who having been a disciple of Demosthenes, was the only orator of his time that presented his hearers with a lively image of the force and spirit of that great master. This man had devoted himself to Pyrrhus, and in all the embassies he was employed in, confirmed that saying of Euripides,

'The gates that steel exclude, resistless eloquence shall enter.'

This made Pyrrhus say, 'That Cineas had gained him more cities by his address, than he had won by his arms'; and he continued to heap honors and employments upon him. Cineas now seeing Pyrrhus intent upon his preparations for Italy, took an opportunity, when he saw him at leisure, to draw him into the following conversation: 'The Romans have the reputation of being excellent soldiers, and have the command of many warlike nations; if it please Heaven that we conquer them, what use, sir, shall we make of our victory?' 'Cineas,' replied the king, 'your question answers itself. When the Romans are once subdued, there is no town, whether Greek or barbarian, in all the country, that will dare oppose us; but we shall immediately be masters of all Italy, whose greatness, power, and importance no man knows better than you.' Cineas, after a short pause, continued, 'But after we have conquered Italy, what shall we do

his object, as he confessed it, when he had conquered Sicily, Calabria, Rome and Carthage."[42]

next, sir?' Pyrrhus, not yet perceiving his drift, replied, 'There is Sicily very near, and stretches out her arms to receive us, a fruitful and populous island, and easy to be taken. For Agathocles was no sooner gone, than faction and anarchy prevailed among her cities, and every thing is kept in confusion by her turbulent demagogues.' 'What you say, my prince,' said Cineas, 'is very probable; but is the taking of Sicily to conclude our expeditions?' 'Far from it,' answered Pyrrhus, 'for if Heaven grants us success in this, that success shall only be the prelude to greater things. Who can forbear Libya and Carthage, then within reach? which Agathocles, even when he fled in a clandestine manner from Syracuse, and crossed the sea with a few ships only, had almost made himself master of. And when we have made such conquests who can pretend to say, that any of our enemies, who are now so insolent, will think of resisting us?' 'To be sure,' said Cineas, 'they will not; for it is clear that so much power will enable you to recover Macedonia, and to establish yourself uncontested sovereign of Greece. But when we have conquered all, what are we to do then?' 'Why then, my friend,' said Pyrrhus, laughing, 'we will take our ease, and drink and be merry.' Cineas, having brought him thus far, replied, 'And what hinders us from drinking and taking our ease now, when we have already those things in our hands, at which we propose to arrive through seas of blood, through infinite toils and dangers, through innumerable calamities, which we must both cause and suffer?' '' *Plutarch's Lives*, translated from the original Greek by John and William Langhorn: New York: 1839; *Pyrrhus*, page 280.

Boileau rendered this conversation into verse. See *Œuvres de Boileau Despréaux; de l'imprimerie de Didot l'aîné:* Paris, 1789: *Épître Première, au Roi:* Volume I., page 165.

[42] *Etudes de Droit International et de Droit Politique*, par Ernest Nys: Paris and Brussels, 1896, page 305.

Leibniz referred also in the same letter to the pacific ideas of Landgraf Ernest von Hesse-Rheinfels.

That mankind was eager and anxious to save itself from the horrors and miseries of war, without clearly knowing how, was amply shown by the rapid and complete success of the most renowned of Hugo de Groot's works—*De Jure Belli ac Pacis*.[43] The father of modern International Law gave it to the world in 1625,[44] two years after Crucé published *Le Nouveau Cynée*. He wrote with the view of softening the unspeakably horrible usages of war.[45] The great Gustavus Adolphus carried a copy with him in his campaigns, and its leading principles were recognized in the peace of Westphalia (1648). Hugo de Groot lived for a time

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[43] *The Law of Nations considered as independent political communities: On the Rights and Duties of Nations in time of Peace*, by Sir Travers Twiss: New edition, revised and enlarged; Oxford; the Clarendon Press, 1884; Introduction to the second edition, pages XVII.–XXI.

[44] Address of Lord Russell of Killowen, Lord Chief Justice of England, on *International Arbitration*, before the American Bar Association at Saratoga, August 20th, 1896: *The Times* (London), August 21st, 1896, page 5. *Studies in International Law*, by Thomas Erskine Holland: Oxford, 1898, page 2.

[45] *Chapters on the principles of International Law*, by John Westlake: Cambridge; the University Press, 1894, page 36 *et seq.*

in Paris, and probably knew both Crucé and his work, and possibly gained some of his ideas on international arbitration from the Frenchman's work. He proposed for the peaceful settling of national disagreements arbitration and congresses of Christian nations. He wrote:

"Another way is compromise, or arbitration, between parties who have no common judge. * * *

"But especially are Christian kings and states bound to try this way of avoiding war. For if, in order to avoid being subject to the judgments of persons who were not of the true religion, certain arbiters were appointed both by the Jews and by the Christians, and the practice is commanded by Paul; how much more is this to be done, in order to avoid a much greater inconvenience, namely, war. * * *

"And both for this reason and for others, it would be useful, and indeed, it is almost necessary, that certain Congresses of Christian Powers should be held, in which the controversies which arise among some of them may be decided by others who are not interested; and in which measures may be taken to compel the parties to accept peace on equitable terms. This was the office of the Druids of old among the Gauls, as Diodorus and Strabo tell us: and we read that the Frankish Kings left to their

nobles the judgment of questions concerning the division of the Kingdom."[46]

Landgraf Ernest von Hesse-Rheinfels published at Cologne, in 1666, a work entitled: *The Discreet Catholic.*[47] Towards the end of this book, the Landgraf suggested a plan of perpetual peace. He wished to establish a "Society of Sovereigns": but in this union he intended only to allow Catholic

[46] "Alterum est inter eos, qui communem judicem nullum habent, compromissum: * * *

"Maxime autem Christiani reges et civitates tenentur hanc inire viam ad arma vitanda. Nam si, ut judicia alienorum a vera religione judicum vitarentur, et a Judæis et a Christianis arbitri quidam sunt constituti, et id a Paulo præceptum, quanto magis id faciendum est, ut majus multo vitetur incommodum, id est, bellum? * * *

"Et tum ob hanc, tum ob alias causas utile esset, imo quodammodo factu necessarium, conventus quosdam haberi Christianarum potestatum, ubi per eos, quorum res non interest, aliorum controversiæ definiantur: imo et rationes ineantur cogendi partes, ut æquis legibus pacem accipiant: quem et ipsum olim apud Gallos Druidum fuisse usum Diodoro ac Straboni proditum. Etiam proceribus suis de regni divisione judicium permisisse Francos reges legimus." *Hugonis Grotii De Jure Belli et Pacis.* Accompanied by an abridged translation by William Whewell, D. D., edited for the Syndics of the University Press, Cambridge, 1853: Book II., Chapter XXIII., Section 8, Articles 1, 3, 4.

[47] *Der so warhaffte als ganz aufrichtig und discret-gesinnte Catholischer, d. i. Tractat oder Discours von einigen so ganz raisonablen und freyen als auch moderirten Gedancken, Sentimenten, Reflexionen und Concepten über den heutigen Zustand*

Princes to enter. His idea was to establish a tribunal at Lucerne, situated mid-way between Austria and France, the two chief Catholic powers.

In 1693, William Penn, impressed with the horrors of the war of the Spanish Succession, published *An Essay towards the Present and Future Peace of Europe, by the Establishment of a European Dyet, Parliament, or Estates.* He referred with approval to the *grand dessein*, and argued that as England had her Parliament and France her States General to settle their respective affairs, so all Europe should have its Parliament to arrange differences of the nations.

Twenty years later, in 1713, and again in 1729, Castel de Saint Pierre, a French *abbé*, advocated perpetual peace.[48] He traced at some length the *grand*

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der Religions-Wesens in der Welt: durch eine der Römisch-Catholischen Religion mit Mund und Herzen redlich zugethane Persohn, also aufgesetzt und verfasst, alles alleinig zu grösseren Ehren Gottes des Allmächtigen angesehen. Non nisi Bonis placere cupio. Beati qui esuriunt et sitiunt justitiam, d. i. welche gern sehen das alles zu Gottes Ehr und fein der Raison nach in der Welt hergienge. Gedruckt in einen solchen Stadt daselbsten es an Catholischen kirchen gewiss nicht ermangelt.

[48] *Paix perpétuelle, 1713.*

Project de traité pour rendre la paix perpétuelle entre les souverains chrestiens, pour maintenir toujours le commerce libre entre les nations, pour affermir beaucoup davantage les Maisons souveraines sur le trône. Proposé autrefois par Henry le grand

dessein of Henry the Fourth and the Duc de Sully, and based his own suggestions upon it. He maintained that there were only two ways in which the weak states could find security against the strong. The first was to weaken the strong powers, almost an impossible, and at best a costly experiment; and the second—without detracting from the force of the strong nations—so to strengthen the weak states by means of allies that all desire on the part of the strong to attack the weak ones would disappear. The latter of these expedients was the plan he urged.

Jeremy Bentham in 1789[49] and Emanuel Kant in 1795[50] wrote in favor of peace among the nations.

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roy de France, agréé par le reine Élizabeth, par Jacques Ier, roi d'Angleterre, son successeur, et par la plupart des autre potentats d'Europe. Éclairci par M. l'Abbé de Saint-Pierre de l'Académie françois, cy-devant premier Aumônier de Madame. A Utrecht, chez Antoine Schouten, marchand libraire (1717).

*Abrégé du projet de Paix Perpétuelle. Inventé par le Roi Henri le Grand, aprouvé par la Reine Élizabeth, par le Roi Jaques son Successeur, par les Republiques & par divers autres Potentes. Aproprié à l'Etat présent des affaires générales de l'Europe. * * * par Mr. L'Abbé de Saint-Pierre De l'Académie Françoise. A Rotterdam, chez Jean Daniel Beman, 1729.* The Abbé's full name was, Charles Irénée Castel de Saint-Pierre.

[49] *Principles of International Law:* Bentham's Works, Edinburgh, 1843, Volume II., page 546.

[50] *Zum Ewigen Frieden* (1796): *Sämmtliche Werke*, Berlin, 1872.

Chateaubriand referred approvingly to the creation of an international European tribunal. In his *Génie du Christianisme* published in 1802, he wrote :—[51]

"If there existed in the midst of Europe a tribunal that judged, in the name of God, nations and monarchs, and that prevented wars and revolutions, this tribunal would be the *chef-d'œuvre* of politics and the last degree of social perfection."

Since that time a long list of thoughtful men have pressed forward the evolution of international peace—William Ladd,[52] Charles Sumner,[53] Richard Cobden,[54] Thomas Balch,[55] Francis Lieber,[56] James

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[51] *Génie du Christianisme* par Chateaubriand : Paris, 1859 : *Oeuvres completes*, Volume II., Page 520.

[52] *Prize Essays on a Congress of Nations*, by William Ladd : Boston, 1840.

[53] *The True Grandeur of Nations: an Oration delivered before the authorities of the city of Boston, July 4th, 1845*, by Charles Sumner : Boston ; 1845.

[54] Speech in the House of Commons, June 12th, 1849, *et cetera*.

[55] The *New York Tribune*, May 13th, 1865 ; *International Courts of Arbitration*, 1874. *Internazionale Schiedsgerichtshöfe* (*Uebersetzung von* Georg Baer) ; Philadelphia, 1899. *Tribunaux Internationaux d'Arbitrage* (*Traduit par* T. W. Balch): Philadelphia, *sous presse*.

[56] The *New York Times*, September 22d, 1865.

Lorimer,[57] David Dudley Field,[58] Émile Baron de

[57] A founder (1873) of *l'Institut de Droit International.* The *New York Tribune*, April 11th, 1874; *International Courts of Arbitration*, by Thomas Balch (1874), edition of 1899, page 28. *La Revue de Droit International et de Législation Comparée:* Brussels; *Proposition d'un Congrès international, basé sur le principe de facto*, Volume III. (1871), pages 1–11: *Le problème final du droit international*, Volume IX. (1877), pages 161–206. *The Institutes of the Law of Nations, a treatise of the Jural relations of separate communities*, 1884, Volume II., Book V.

[58] *Draft Outlines of an International Code*, by David Dudley Field, New York: Diossy and Company, Law Publishers, 1872.

Prime Linee di un Codice Internazionale del Giurista Americano, Davide Dudley Field *precedute da un lavoro originale, La Riforma del Diritto delle Genti e l'Istituto di Diritto Internazionale di Gand del traduttore* Augusto Pierantoni, *Professore on. di diritto internazionale, Prof. or. di diritto constituzionale nella R. Università di Napoli, Avv. alla Corte di Cassazione, Membro fondatore dello Istituto di diritto internazionale di Gand, ecc.:* Napoli: *Presso* Nicola Jovene *Libraio-editore*, 1874.

Projet d'un Code International proposé aux Diplomates, aux Hommes d'État, et aux Jurisconsultes du Droit International contenant en outre l'Exposé du Droit International actuel sur les matières les plus importantes: Extradition, Naturalisation, Statuts personnel et réel, Droit de la guerre, etc., par David Dudley Field, *Avocat, docteur en droit, ancien membre du Congrès des États-Unis, rédacteur des Codes de New York, et membre fondateur de diverses sociétés savantes, traduit de l'Anglais par* Mr. Albéric Rolin, *Avocat près la Cour d'Appel de Gand, et secrétaire de l'Institut de Droit International:* Paris: Pedone-Lauriel; Gand: Adolphe Hoste, 1881.

Laveleye,[59] Frédéric Passy,[60] Count Kamarowsky,[61] Philip Stanhope,[62] Alessandro Corsi,[63] Michel Revon,[64]

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[59] A founder (1873) of *l'Institut de Droit International. Des Causes Actuelles de la Guerre en Europe et de l'Arbitrage*, par Emile de Laveleye: Brussels, 1873. *Cour arbitrale Anglo-Américaine: Revue de Droit International et de Législation Comparée;* Volume XVIII. (1886), page 300.

[60] A founder (1888) of the Interparliamentary Union for Peace and Arbitration. *La barbarie moderne. La question de la paix:* Paris: 1891, *et cetera.*

[61] *De l'idée d'un tribunal international: Revue de Droit International et de Législation comparée;* Volume XV. (1883), pages 44–51. *Le tribunal international* (1883 in Russian, 1887 translated into French).

[62] A founder (1888) of the Interparliamentary Union for Peace and Arbitration and an active worker for international peace.

[63] *Arbitrati Internazionali:* Pisa: Enrico Spoerri, 1894, *et cetera.*

*Association pour la réforme et la codification du Droit des Gens, XII*me *conférence; Bruxelles, Octobre, 1895:—Rapport sur les conclusions du comité spécial nommé par l'Association dans sa XVI*me *Conférence (Londres) et projet de règlement pour les Arbitrage Internationaux présentés par le membre du comité,* Alexandre Corsi, *Professeur de Droit international à l'Université de Pise:* Turin, 1895.

[64] *L'Arbitrage International: Son passé—son présent—son avenir* par Michel Revon: *Ouvrage couronné par l'Institut; (prix Bordin,* 1892): Paris: Arthur Rousseau, 1892.

Ivan de Bloch,[65] the Chevalier Descamps,[66] and many others—and finally ex-President Cleveland[67] and the Emperor Nicolas the Second.[68]

[65] *Der Krieg*, von Johann von Bloch : Berlin : Puttkammer & Mühlbrecht, 1899. *War* by John [de] Bloch : New York and London.

[66] One of the delegates of Belgium at the Hague Conference. *Essai sur l' organisation de l' Arbitrage International : Mémoire aux puissances par* Le Chevalier Descamps, *Sénateur de Belgique, Président de l' Union Interparlementaire, avec le Projet d' Institution d' une Cour permanente d' Arbitrage international adopté par la conférence interparlementaire de Bruxelles* (*Session de 1895*) *et le Rapport présenté à la conférence par* M. Houzeau de Lehaie, *ancient membre de la Chambre des Représentants de Belgique :* Bruxelles : E. Guyot, *imprimeur du Sénat de Belgique, 1896.*

[67] *Message from the President of the United States, relative to the Venezuelan boundary controversy ; and correspondence with the British Government on the subject. Senate Documents, Volume I.; Document No. 31, Fifty-fourth Congress, First Session, 1895–'96.* President Cleveland's special message, December 17th, 1895 ; Mr. Olney to Mr. Bayard, July 20th, 1895 ; Mr. Adee to Mr. Bayard, July 24th, 1895 ; Lord Salisbury to Sir Julian Pauncefote, November 26th, 1895 ; and Lord Salisbury to Sir Julian Pauncefote, November 26th, 1895. *Message from the President of the United States, transmitting a treaty between the United States and Great Britain for the arbitration of matters of difference between the two countries, signed at Washington, January 11, 1897. Senate Documents, Volume III. ; Document No. 63, Fifty-fourth Congress, Second Session 1896–'97.* President Cleveland's special message, January 11th, 1897 : the Treaty as signed by Richard Olney and Sir Julian Pauncefote.

[68] The call for the Hague Conference. See the *Revue de Droit International et de Législation Comparée :* Brussels : Second Series, Volume I., 1899, page 187 *et seq.*

Nations and Governments also have shown a trend towards the adoption of international arbitration. In several of the treaties of peace concluded in the latter half of the seventeenth century clauses were inserted providing to refer questions of commercial privileges and the sovereignty of small territories to joint commissions. Thus articles twenty-four and twenty-five of the treaty of Westminster concluded in 1655 between England and France, provided that all claims for damages sustained by either party through the capture of prizes at sea since 1640, as well as the possession of three forts in North America, should be referred to a board consisting of six commissioners, three appointed by each power. And in case this board could not arrive at a decision on any point, such question should be referred to the arbitration of the Hansa Free City of Hamburg.[69] Again in the eighth

[69] These articles were due probably to the initiative of Oliver Cromwell.

"*Treaty of Peace between the Kingdom of* France, *and the Republick of* England, Scotland *and* Ireland. *Done at* Westminster *the 3d of* November, 1655."

"XXIV. And whereas, since the Year 1640 many Prizes have been taken at Sea, and both Nations, their People and Subjects, have suffer'd many Losses, 'tis agreed that three Commissioners shall be appointed on both sides immediately after the Ratification of the present Treaty, who shall be sufficiently authoriz'd to consider, examine, estimate and explain such Prizes and

article of the treaty of Ryswick in 1697, England and France agreed that the possession of certain

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Losses, and to determine and decree the Compensation, Payment and Satisfaction for them, according to the Demands which shall be produc'd and exhibited before them by either Party, their People and Subjects, within three Months to be reckon'd after the Publication of this Treaty: for which purpose the Commissioners shall meet in the City of *London*, within six Weeks after the said Publication, and, if possible, shall determine the said Controversys within five Months next ensuing; but if the said Commissioners shall not agree within the space of six Months and a Fortnight, then the said Controversys, which remain undetermin'd, shall be referr'd, as they are by these Presents referr'd, to the Arbitration of the Republick of *Hamburgh*, to be decided within four Months, to be computed from the Expiration of the aforesaid space of Time limited by the Commissioners. And that the said Republick of *Hamburgh* shall be desir'd, as it is by these Presents desir'd, to assume that Arbitration, and to delegate Commissioners to give Judgment concerning the Premises, in such convenient place as by the said Commissioners shall be appointed; and whatsoever shall be determin'd by the said Arbitrators or Commissioners shall bind both Partys and be perform'd *bonâ fide* within six Months next ensuing. Provided nevertheless, that if neither the said Commissioners appointed by both Partys, nor the said Arbitrators do not determine the said Controversys within the time prescrib'd, no body shall on that account be put to any Trouble; nor shall the old Letters of Marque be restor'd to their full Force, nor other new ones granted within the Space of four Months after the Expiration of those four Months, which are prescrib'd to the City of *Hamburgh* for the Determination of the said Controversys.

"XXV. And whereas three Forts, *viz.: Pentacoet*, *St. Jan* and *Port Royal*, laterly taken in *America*, together with the Goods therein found, wou'd be reclaim'd by the abovemention'd Lord Ambassador of his said Majesty, and the Lord

places on Hudson's Bay should be referred to commissioners named by the two nations.[70]

Commissioners of his Highness wou'd argue from certain Reasons that they ought to be detain'd, 'tis agreed that such Controversy shall be refer'd, as it is by these Presents refer'd to the same Commissioners and Arbitrators, to be determin'd in the same manner and time, as the Losses sustain'd by both Partys since the Year 1640, and referr'd to in the last Article."

A General Collection of Treatys of Peace and Commerce, Renunciations, Manifestos, and other Publick Papers, from the Year 1642, to the End of the Reign of Queen Anne: London, 1732: Volume III., pages 157–159.

[70] In the Treaty of Ryswick the 10/20 of September, 1697, the eighth article reads :—

"VIII. Commissioners shall be appointed on both sides, to examine and determine the rights and pretensions which either of the said kings hath to the places situated in Hudson's bay ; but the possession of those places which were taken by the French, during the peace that preceded this present war, and were retaken by the English during this war, shall be left to the French, by virtue of the foregoing article. The capitulation made by the English on the fifth of September, 1696, shall be observed, according to its form and tenor ; the merchandizes therein mentioned shall be restored ; the governor of the fort taken there shall be set at liberty, if it be not already done ; the differences arisen concerning the execution of the said capitulation, and the value of the goods there lost, shall be adjudged and determined by the said commissioners ; who, immediately after the ratification of the present treaty, shall be invested with sufficient authority for settling the limits and confines of the land to be restored on either side, by virtue of the foregoing article, and likewise for exchanging of lands, as may conduce to the mutual interest and advantage of both kings.

"And to this end the commissioners, so appointed, shall, within the space of three months from the time of ratification

When under the leadership of Washington, we gained our national independence, with the right to manage our own affairs free of foreign control, we came—thanks to the Atlantic and the Pacific Oceans that separated us from the continents of the Old World—into the family of nations with exceptional advantages for developing international peace.

By Jay's Treaty in 1794 the United States agreed with England to submit the determination of what river was the Saint Croix to arbitration.[71] Again in 1822 the same two powers referred to the arbitration of the Emperor of Russia the interpretation of some of the clauses of the Treaty of Ghent.[72] And

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of the present treaty, meet in the city of London, and within six months, to be reckoned from their first meeting, shall determine all differences and disputes which may arise concerning this matter; after which, the articles the said commissioners shall agree to, shall be ratified by both kings, and shall have the same force and vigor, as if they were inserted word for word in the present treaty."

A Collection of all the Treaties of Peace, Alliance and Commerce, between Great Britain and other powers from the Revolution in 1688, to the Present Time. London: Printed for J. Almon, opposite Burlington House, in Piccadilly, 1772: Volume I., 1688–1727, page 15.

[71] *Treaties and conventions concluded between the United States of America and other Powers since July 4, 1776:* Washington; Government Printing Office, 1889: page 382.

[72] *Treaties and conventions concluded between the United States of America and other Powers since July 4, 1776:* Washington; Government Printing Office, 1889: page 418.

from that time the United States have taken the leading part in the development of international arbitration.

Not only by treaties covering individual cases have many of the nations of the earth recognized the applicability of international arbitration, but also through their legislative bodies they have given countenance to this mode of settling international quarrels. Though the motion of Richard Cobden in 1849 in the House of Commons favoring international arbitration was lost, yet a similar motion by Henry Richards in 1873 was carried, and the same year (1873) the Italian Parliament, upon the initiative of Signor Mancini,[73] adopted a like resolution. Since then many other legislative bodies have voted approving the same principle. In 1897 the Olney-Pauncefote Convention—though it failed of confirmation by the United States Senate—provided, with certain restrictions, that for five years the United States and Great Britain should refer all differences between them that they could not settle by diplomacy, to an International Court of Arbitration. And in 1898 Italy and the Argentine Republic adopted

[73] Pasquale Stanislao Mancini was professor of International Law in the University of Rome, a member of the Italian Parliament, Minister of Justice and then of Foreign Affairs: he was a founder of *l'Institut de Droit International.*

a treaty of arbitration, based on the Olney-Pauncefote Convention.[74]

[74] *Étude sur un nouveau traité général d'arbitrage par* Alessandro Corsi, *Professeur de Droit international à l'Université de Pise: extrait de la Revue générale de Droit international public, 1899* (Paris): Turin, 1899.

V.

The past development of international arbitration gives promise for its future usefulness, although grave difficulties are certain to arise in its application. Cases involving rather private than national interests can be solved by arbitration. To this class belonged the "Alabama Claims" and the Bering Sea seal fisheries. Those disputes were not of such a nature that the national position and power of either of the litigants were concerned, neither were they legacies involving the possession of territory nor were they the outgrowth of bloody and bitter wars between the contestants.

These two cases, however, are concrete proof that international arbitration is possible in some instances. As Mr. Thomas Balch wrote in 1874 :—[75]

"The friends of International Courts may fairly assert that this mode of settling great national questions has been fully and successfully tried, that it may be considered as having thereby passed into and henceforth forming a distinct part of that uncertain and shapeless mass of decision and dicta which we call International Law. Without partici-

[75] *International Courts of Arbitration* by Thomas Balch, 1874 : Philadelphia, Henry T. Coates & Co., 1899, page 23.

pating in the visions so grandly developed by Zuinglius,[76] and so fondly cherished by Grotius, of the good time, a good time to be won only by toil and unremitting efforts,—

"When the war-drums throbbed no longer, and the battle flags were furl'd,
In the Parliament of man, in the Federation of the World." [77]

we may reasonably expect that through such tribunals, through their proceedings and decisions, and not through empirical codes, we may ultimately arrive at some more tangible and better ordered system of International Law; one to which the assent of civilized peoples may be given greatly to the benefit and peace of mankind."

In an international quarrel such as that between France and Germany over the possession of Alsace and Lorraine, different interests, much more difficult to deal with, are involved. It has been mooted once or twice that that dispute might be amicably settled by Germany returning the Reichsland, or even only Metz and the annexed part of French speaking Lorraine, to France, who in return would give hard cash or some of her colonial possessions or both. Admirably suited as that question is theoretically for

[76] *Civitas Christiana.*

[77] Tennyson.

argument before an International Court of Arbitration, the talk of France buying back the whole or even a part of Alsace and Lorraine, except at the point of the bayonet, seems but a dream. For the possession of those provinces, with their rich mineral deposits and the strong strategic value of Strasbourg and Metz, gives their possessor an immense advantage in resources and position for any future war.[78]

The general adoption during the latter half of the nineteenth century of referring international cases

[78] "What then should we take away from France? Should we annex still more French land? I was already—I must say so honestly—no longer in favor in 1871 of taking Metz. I was at that time in favor of the language limit. However, I made inquiries from the military authorities, before I finally made up my mind. It was, if you will permit me to mention this historic episode, Thiers, who said to me: 'We can give only one, either Belfort or Metz; if you wish to have both, then we will not make peace at present.' I was at that time much worried about the interference of neutrals, and had been wondering for months, that we did not receive a letter from them. I wished greatly, that Thiers should not be necessitated to return to Bordeaux, to perhaps set back peace once more. I then conferred with our military authorities and especially with my friend [von Moltke] now sitting in front of me: 'Can we agree to let one of the two go?' and I received the answer: 'Belfort, yes! Metz is worth one hundred thousand men, the question is this: Do we or do we not wish to be one hundred thousand men weaker than the French should war break out again?' Thereupon I said: 'Let us take Metz!'"—*Die politischen Reden des Fürsten Bismarck. Historisch-Kritische Gesammtausgabe besorgt von Horst Kohl:* Stuttgart, 1894: Volume XII., page 187.

to the decision of international tribunals composed exclusively of jurists is a distinct improvement over the earlier practice of usually referring the questions at issue to the opinion of a monarch or other executive head of a government. In 1867, Mr. George H. Yeaman, then the United States Minister at Copenhagen, wrote to Mr. Thomas Balch *à propos* of peacefully settling the pending Anglo-American disputes, and said:—

"Omitting all discussion of the propriety and feasibility of now referring the matters in dispute to arbitration, the mode you advocate, I only desire to express my decided approbation of your suggestion as to the mode of selecting and organizing tribunals of arbitration, in cases where the powers interested agree to a reference. That the tribunal or arbiter shall not be the executive head of a government, but a small number of jurists of acknowledged character and learning.

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"Thus the advantages of learning, and of freedom from all improper influences are on the side of a select committee or board of jurists. From their breasts selfishness, jealousy, partiality and refined policy, as applied to the matter before them, are all excluded. They work out their conclusions in the light of usage, precedent, right reason,

natural right, *science*. What of ambition they may have is constrained to be innocent and laudable, for it can only be gratified by building a reputation, which, in their vocation, can have no other foundation than justice and truth. The judgments of such tribunals would be sought for and recognized as the highest evidence of what the law is; and they would develop, polish, and make symmetrical the law of nations, as the judgments of Hardwick, Eldon, and Mansfield have done the law of England, and as the judgments of Kent, Marshall and Story have done the law in the United States."

The future progress of International Arbitration will depend largely whether an international sanction develops behind International Tribunals such as the national force that stands back of the National Tribunals. Individual citizens submit to the decisions of municipal Courts, because they know that the whole power of their Nation is ready, if necessary, to enforce the decrees of the Courts. The power of a State is used to uphold the judgment of its Courts because society, as a whole, has found through experience, that only by freeing the public peace from the quarrel of individuals can trade go on and develop. In the same way, not until both Governments and Peoples recognize that

the growing interdependence of the different countries of the world through the increase of international trade exposes the combatants to increasing hurt from war, will they be willing to give up the idea of seeking to add to their wealth and trade and prosperity by waging wars of aggression and conquest. Then, perhaps, the Powers will submit their quarrels to, and, if necessary, uphold the decisions of an International Court in order that universal commerce may go on unmolested. Such a Tribunal would then be able to arrange many points of difference between them. But, even then, it cannot be hoped that against the power of the strong and the law of the survival of the fittest, it could peacefully settle all causes of quarrel between Nations.

An actual tribunal similar, by analogy, in many respects to a permanent International Court of Arbitration is the Supreme Court of the United States of North America. That Court arranged in peace by its decisions many differences between the sovereign States of the Union that, without the existence of such a supreme tribunal, would doubtless have resulted in armed strife. But that high Court, though it tried in the Dred Scott case, could not decide the dispute over the slavery issue between the conflicting interests of the Northern

and the Southern States.[79] That question was finally settled by a resort to arms to see which side was the stronger.

An important step forward in the cause of international peace was the embodiment into a fact by the Hague Conference of the idea expressed by Émériс Crucé two and three-quarter centuries before, of a permanent International Court of Arbitration. The many international disputes submitted during the last hundred years or so to arbitration, together with the provisions that the conference made for such a permanent Court, prove that some international difficulties can be settled by arbitration and that Émériс Crucé was not altogether visionary in his ideas. Though the changes wrought in recent years by force of arms in the political divisions of the world are sufficient to show that war has lost litttle or none of its influence upon human affairs, and that it remains, as formerly, the last resource in the settlement of international quarrels, yet the very fact, that such a body of eminent diplomats as assembled at the Dutch Capital last summer, met to discuss the possibilities

[79] Dred Scott, Plaintiff in Error, *v.* John F. A. Sandford (December term, 1856): *19 Howard's United States Supreme Court Reports*,, page 393. The opinion of the Court was given by the Chief Justice, Roger Brooke Taney, pages 399–454. Every other

of avoiding war, and provided for the establishment of an International Court of Arbitration, gives hope to the partisans of international peace, and, in the words of James Lorimer encouragement "to teach, to wait, and—to pray."

In the development of the principles and practice of international arbitration, Émeric Crucé has played an important rôle; he deserves to be much more known than he is, and his name should be placed high among those of the men who have helped to substitute, in some measure, settlements between nations by judicial means instead of by force of arms. For in the early part of the seventeenth century, he proposed substantially such a permanent International Court of Arbitration as the Hague conference provided for; and unless the archives of the Old World reveal in some of their unknown manuscripts an earlier expounder of international arbitration, Émeric Crucé, probably, can be looked upon as its modern originator—as the first to propose an International Court of Arbitration.

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member of the Court delivered a separate opinion. Justices Wayne, Nelson, Grier, Daniel, Campbell and Catron concurred with the Chief Justice, while Justices McLean and Curtis dissented: *ib.* pages 454–633.

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